THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.15794 AND 16197 OF 2007

DATED 07th AUGUST, 2007

BETWEEN:

R.V.V.Nageswara Rao

… Petitioner

AND

The Mandal Revenue Officer, Palakole Mandal, West Godavari District and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.15794 AND 16197 OF 2007

COMMON ORDER:

The second respondent in W.P.No.15794 of 2007 filed W.P.No.5279 of 2007 alleging that land in R.S.Nos.58/3 and 59 situated at Pedamamidipalli Village known as Pothuraju Cheruvu is drinking water source for the Village and that there are encroachments on the tank bund and that in spite of representation made by him, the respondents, namely, the District Collector, Revenue Divisional Officer, Mandal Revenue Officer and Pedamamidipalli Gram Panchayat did not take any action against encroachers. This Court disposed of the writ petition on 24.04.2007 directing the Gram Panchayat to take necessary action against the encroachers by issuing notice under Section 98 of A.P.Panchayat Raj Act, 1994 within a period of two weeks from the date of receipt of copy of said order. Presumably, in obedience to the said order, the Mandal Revenue Officer, Palkol (first respondent herein) issued urgent notice bearing R.C.No.100/2007 (B), dated 19.07.2007 to petitioner in W.P.No.15794 of 2007 (hereafter called, first petitioner) and to the petitioner in W.P.No.16197 of 2007 (hereafter called, second petitioner). The said notices are challenged in these two writ petitions.

The petitioners contend that without issuing any prior notice, the Mandal Revenue Officer cannot direct petitioners to remove alleged encroachment. Secondly, it is contended that land in survey No.59/1 admeasuring Acs.0.03 was purchased by father of first petitioner under registered sale deed, dated 28.12.1964 and that second petitioner got the property under relinquishment deed executed by his mother on 30.09.1974 for an extent of Acs.0.01 in survey No.59/1. Both the petitioners assert that they never encroached upon Pothuraju Cheruvu or the tank bund and the notices are issued without conducting survey and without verifying revenue records.

When the matter was initially listed, first petitioner filed W.P.M.P.No.20784 of 2007 to implead second respondent, who had earlier filed writ petition being W.P.No.5279 of 2007. He filed a detailed counter affidavit. The case projected in his counter affidavit is as follows. Pothuraju Cheruvu admeasuring Acs.0.94 is comprised in R.S.Nos.58/3. It is a drinking water source for the village. He submitted representation on 02.11.2001 to Mandal Revenue Officer, Palkol for removal of encroachments. He also submitted similar

representations to Hon'ble the Chief Minister and revenue officials. The same was enquired into. The Deputy Inspector of Survey in the office of Sub Collector, Narsapur, conducted survey and planted stones. He also sent report to Revenue Divisional Officer, Narsapur, who submitted the same to Sub Collector, Narsapur by letter, dated 12.09.2003. The Gram Panchayat passed resolution on 15.09.2004 requesting Mandal Revenue Officer to take appropriate action for removal of encroachment. No action was taken. Second respondent along with his wife submitted representations to District Collector and Mandal Revenue Officer, in vain. Then he filed W.P.No.5279 of 2007, pursuant to which the impugned notice is issued. The allegation made by petitioners that they have not encroached upon Pothuraju Cheruvu is denied. Along with counter affidavit, second respondent also enclosed the report of Deputy Inspector of Survey as well as endorsement of Revenue Divisional Officer through which the said report was sent to Mandal Revenue Officer. The photographs showing Pothuraju Cheruvu and its encroachment made on its tank are also enclosed.

Learned counsel for petitioners vehemently contends that the petitioners are in occupation of land in survey No.59/1 in their own land, which they got by virtue of valid registered documents and that they never encroached upon Pothuraju Cheruvu. He also disputed the allegation that they are polluting the drinking water source. Secondly, he would urge that if encroachment is to be removed, appropriate action has to be taken under A.P.Land Encroachment Act, 1905, but without applying mind, Mandal Revenue Officer issued notice threatening to initiate action under section 98 of Panchayat Raj Act. He submits that Section 98 of Panchayat Raj confers powers on Gram Panchayat to remove encroachments, and therefore, action taken by Mandal Revenue Officer is illegal and arbitrary. **Per contra**, learned Assistant Government Pleader and learned counsel for second respondent submit that when Pothuraju Cheruvu is a drinking water source, the petitioners cannot be permitted to encroach upon the tank bund and raise constructions, which would pollute drinking water.

It is no doubt true that the land, which is classified as tank or a water body cannot be assigned nor can it be allowed to be encroached upon for economic activity. Water body should be preserved as such so as to maintain ecological balance and ensure healthy environment to the people. In this case, the land in survey No.58/3 admeasuring Acs.0.98 is admittedly Pothuraju Cheruvu and is a drinking water source. If encroachments are allowed or those persons who claim ownership rights on the land adjacent to tank bund are permitted to construct houses, it would certainly pollute drinking water source

which might result in serious health hazards to those people who consume water from the tank. But rule of law requires that Mandal Revenue Officer or the Gram Panchayat have to follow necessary procedure under relevant law. When this Court disposed of the writ petition filed by second respondent, it was intended that Mandal Revenue Officer would issue such a notice. A reading of the same would not reveal whether it is issued under Section 7 of Land Encroachment Act or any other Board Standing Order. Therefore, this Court is not able to countenance the submission of learned Assistant Government Pleader that the impugned order may be treated as notice giving liberty to petitioners to file explanations. If action is to be initiated under Land Encroachment Act, notice has to be issued under Section 7 of Land Encroachment Act in the form prescribed under Board Standing Order 26. If Gram Panchayat has to initiate action, notice has to be issued under Section 98 of Panchayat Raj Act. Be that as it is, the petitioners rushed to the Court without approaching Mandal Revenue Officer and submitting their explanations. Therefore, this Court is not inclined to grant any relief to them.

The writ petitions, with the above observations, are dismissed. No costs.

(V.V.S.RAO,J)

07.08.2007.
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